R.D. File No. 236
1939

Collection No. (1)

Residency.

Pros. Serial Nos. 1–4

(K)

Subject.

Action under Sec: 83 A of the Bangalore Municipal Law

(Vacant lands in the South of Wheeler Road)

Previous References.

Later References.

565
23

S. 97.—(Green).

MFP—1663 S&P—(M-2971)—24-6-38—100,000.

NOTES AND PRECIS.

Dy.No.3453 S.N.1

1

The matter relates to the action taken by the District Magistrate under section 83 A of the Bangalore Municipal Law. Under the Resident's proceedings dated the 18th August 1928, the District Magistrate is invested with powers to pass orders on behalf of the Resident on applications to which section 83 A applies.

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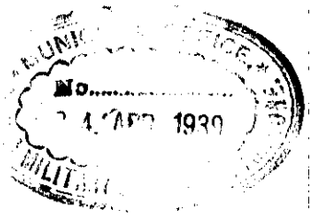
565-23
(K)

The petition may be sent to the District Magistrate, U/O for favour of remarks.

17.4.39

18/4/39

SECY



The District Magistrate, C & M Station, Bangalore.
N.O.No. ~~2343~~, dated the 20th February 1939.
R.D. 286-39.

2

In 1924 when Mr. K. C. Munisawmy Chetty applied for permission to sub-divide the land in question, the President, Municipal Commission, informed him that sanction for 8 plots to the rear of the existing bungalow (No.5, Wheeler Road) would be accorded if he was prepared to pay for the construction of the proposed 30 feet road and culvert. As Mr. Munisawmy Chetty did not comply with the above requirement he was not accorded any final sanction.

(A) * Comp 20 / Munl. File No 99-24

3

2. The above conditional sanction order was issued without a reference being made to the Military Authorities as the Provisions of section 83-A, Bangalore Municipal Law, prohibiting the erection of buildings in the restricted areas save with the consent of the Resident, were inoperative at the time. The section came into operation only from the 24th July, 1928, when the notification as required by

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sub-section (1) of the same section was issued.

3. Subsequently, in 1934 when Rao Saheb Muthuvadivelu Mudaliar applied for renewal of the sanction referred to in para 1 above, the matter was referred to the Military Authorities who strongly objected on the score of congestion. The application was therefore refused.

4. Mr. Nathmull was well aware of the above refusal when the land was purchased by him as he himself mentioned this fact in his petition dated the 10th August, 1936 — do — His statement in para 4 of the P.U.C. that he purchased the land on the strength of the original orders, cannot therefore be correct.

5. Several applications were subsequently received from different parties including Mr. Nathmull, for the same sub-division One Mr. Munisawmappa even applied for permission to divide the land into 4 plots but all these applications were refused as the Military Authorities were quite against permitting smaller sites in the area in view of its close proximity to the Officers' Mess etc.

6. In spite of several refusal orders Mr. Nathmull again applied in 1937 (1939?) for a reconsideration. It was then that he was referred to the previous orders and informed that further representations would be ignored.

7. The two files relating to the above sub-division are herewith submitted for perusal and return.

H.H. Carleton
22.5.39

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

U.O. No. P 891/2/38 Dated 22nd May, 1939.

OFFICE OF THE
RESIDENT
IN MYSORE, BANGALORE.
MAY
Diary No. 5242.
File No. R.D. 236/35.

25-5-39

Dy. No. 5242.

9 The history of this case has been clearly given by the District Magistrate in paras 2 to 8 of notes and for the purposes of facility, references have been given to pages in the Municipal files.

10 The substance of Nuthmall's application is that permission having been accorded in 1924 to the then owner, it is unjustifiable now to refuse sanction to his successor-in-title. District Magistrate has forwarded the Municipal files for reference and states that at the time when the original conditional sanction had been accorded, section 83-A of the Municipal Law was not in force; the condition imposed not having been complied with the plotting out of the land was not then carried out; subsequently when the renewal of sanction was applied for, section 83-A had been introduced, and as the Military authorities strongly objected to the division of the land into plots on the ground of congestion, the application has been refused.

11 Normally, it appears, the Resident cannot be moved in a case like this when the District Magistrate under the powers vested in him has passed an order " on behalf of the Resident." Under sub-section (8) of section 83-A, an aggrieved party has a remedy open to him to move the Governor General in Council. The order in question itself has virtually been passed by the Resident. and no statutory appeal lies to himself against such an order. Ofcourse it may always be open to him to review or revise his orders on grounds of justice and equity. But no case has been made out justifying an order of reversal of the District Magistrate's order.

12 The applicant threatens legal proceedings and so

the.....

the question might have to be considered a little carefully. Perhaps he relies on the proviso to sub-section (2), which relates to a grant of sanction by the Commission under section 83 before the issue of a Notification under 83-A. The original order was issued in 1924, and the Notfn. under 83A was issued in 1928. But it appears the order issued in 1924 did not amount to a "sanction granted" within the meaning of the proviso referred to. It merely said " sanction will be accorded" in case certain conditions were complied with. The conditions were not complied with, and so no sanction called for and was granted Nor is it open to any successor-in-title to say that he will comply with the conditions imposed and demand a sanction. For under sub-section (6) of section 83, the sanction given or deemed to have been given in 1924 had lapsed. (It may be noted, however, that the law deals only with the erection of buildings; and strictly the section will be applicable only after the division of the area into plots is carried out and permission to build is applied for).

13

In the circumstances the applicant may, it appears be informed that the Resident sees no reason to interfere with the orders passed by the District Magistrat and Assistant to the Resident.

14

One point, it appears, arises for consideration in this connection. Please see the Proceedings of the Resident dated the 18th August 1928 conferring authority on the District Magistrate. It may be seen that the scope of the order is restricted, and the District Magistrate is authorised to pass orders only granting applications; and the further condition namely, that the President Municipal Commission and

the.....

the Military authorities must agree to the "grant of permission in each case" lends support to the interpretation that his authority extends only to the grant of applications. And that was all the District Magistrate wanted. Please see his letter to this Residency dated 4th August 1928. He asked for authority only to give sanction: cases in which he thought permission to build should be refused would be referred for Resident's orders. The order itself was then issued in conformity with this. The question arises whether there was proper authority to refuse permission in this case, and in cases similar to this. It is for consideration whether the question may be taken up in consultation with the President, Municipal Commission, U/O.

Submitted for orders.

× S.N. 80
(K) F.565-1923

ASRao
31.5.39

(from para 1)

Secretary.
15. I agree with the note. This petition can be turned down we can ask POC to refer cases of refusal of permission in future to Resident for order

ASRao
3/6/39.

Resident 16. This shall do

L 8891/38 9 7½ sp.

17. Draft of an order submitted rejecting the application is submitted

18. It is for consideration whether before officially writing to the President, Municipal Commission, asking him to refer cases of refusal of permission to Resident for orders, remarks may be invited U.O. on the point.

Asst. 6.6.39

(from para 15)

Secretary. 19. No need for official order. PMC may see file U/O.

H Emerson 7/6/39

To President, Municipal Commission, C. & M. Station, Bangalore

U/O. No. D. 3453-39/Judl. dated the 7th June 1939

Seen. H Lewis 7/6/39.

after issue of Regd draft

S.N. 84

(K) F 565-23

20 Although the Resident's order No. 7855 dated the 18th August 1928 only authorised the District Magistrate to grant applications under Section 83-A of the B. M. L. for permission to erect or re-erect buildings, he has also been exercising the power of refusing applications all these years, though there is nothing on record to show how this came to happen. The procedure however has not given rise to any complaints.

21 Important cases in which there has been any doubt or difference of opinion between the Military authorities and the President have always been referred to the Resident for orders, e. g., the lay-out of Sydney Park.

22. The number of applications for building in the areas notified by the Resident under Section 83 (1) of the B.M.L. has considerably increased in recent years. In 1927 there were only 6 cases a month but now there are about 50 applications per month on the average, of which roughly two-fifths may end in refusal.

23. Apart from the time required for the departmental examination of these applications, reference has to be made in some cases to the Health Committee and the Military authorities before final orders are issued. The process involves a good deal of time. If all cases of refusal of permission are to be referred to the Resident, it may become impossible in many cases to issue the orders within the prescribed period of 6 weeks. It will certainly mean a great increase in work for the Residency office and many of the cases are petty ones of little importance. In the circumstances, I suggest that the Resident may kindly approve the present procedure under which the District Magistrate refuses, as well as grants, permission. I would submit that but for the undertaking given in Mr. Russell's letter No.R.3124/1 dated 6th August 1928, the authority to grant permission would normally be understood to include that to withold permission. An aggrieved party can be left to approach the Resident, who can then pass final orders in cases of refusal.

H.H. Carleton

To
The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

U/O No. 3144/89. Dated 29th June, 1939.

OFFICE OF THE
HON'BLE THE RESIDENT
MYSORE, BANGALORE.
3 JUL 1939
Diary No. 6752
File No. 1/9a 236/39

24. We may agree, as the numbers are so large

3/7/39

Resident

15

The present procedure having been approved, the next question is whether it is or it is not necessary to modify the existing orders which are in the form of "Proceedings" As District Magistrate rightly observes, the authority to grant permission would normally be understood to include that to with-hold permission. It may be seen, however, that while section 83-A of the Municipal Law specifically conferred power on the Resident either to "refuse such permission or to grant it absolutely ---", the power delegated restricted itself to "granting applications". Even without a reference to Mr.Russel's letter. the orders as they stand tend more to the interpretation that they confer only the power of "granting applications". "To pass orders, on behalf of the Resident under section 83-A ---" would have definitely connoted the power to grant as well as to refuse. The words "granting applications" may either be deleted, or as pointed out by District Magistrate, their existence and retention do not exclude the power of refusal.

26

The next question is if the words "granting applications" are deleted now, does it imply that the District Magistrate had no power as long as they existed to refuse permission, and parties have been prejudiced on that account One answer is that the power existed before, but has been only clarified. A second answer is that they had a remedy open to them to move the Resident or the Governor General, and they have waived the right and cannot complain subsequently of any irregularity. The matter would have been different if no right to grant permission had existed and still permission was granted, and in pursuance thereof constructions took place. In any case, the orders are only on the Resident's Office files and on the files of the District Magistrate. The only point is whether they should be more specific or may be left in the present form.

For orders.

Secretary ASR 5.7.39

9

27 Dr. may see file. No order need be issued

6/7/39

President, Municipal Commission (Dt. Magistrate),

No. 3144/39.
6.7.39.

D. No. 6754-39/Judl., dated the 6th July 1939

H.H. Carleton
8.7.39

jc.

The Secretary to the Hon'ble the Resident in Mysore, B'lore

U.O. No. 3144/39. dy 10/7/39.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
11 JUL 1939
Diary No. 7098
File No.

28. No further action is necessary.
The 2 office files forwarded by P.M.C with his
u/o. note dated the 22nd May 1939, may be
returned. u/o.

Returned

11.7.39

12.7.39.

14.8.39

Answer

2 1

It is not correct to say that there is no notification published in the Station regarding the areas covered by section 85-A. A notification is published in the Municipal Bye-laws. Mr.Muthmall seems to have been aware of the refusal to divide the land into plots when he purchased the land. Please see para 5 of notes. There can be no question of the Government purchasing the land from Mr. Nathmall because he has been put to great loss, nor to grant sanction for the division into plots. Please see para 6 of notes: the Military authorities seem to be against the division into 4 plots. Perhaps the applicant may be told that the orders of the Resident were final, and that there is no case for reconsideration.

Draft is submitted for approval.

14.9.39

19/9/39

Secretary.

Record
No

CORRESPONDENCE.

J 1-4-39 S.N.1

OFFICE OF THE
RESIDENT
BANGALORE.
Received
Diary No. 3458

To,

The Secretary

to the Hon'ble the Resident in Mysore,

Bangalore.

From,

L.P.Nuthmall,
R.H.A.Bazaar, Bangalore.

Respected Sir,

Subject :- Vacant land to the south of Wheeler Road.

Con. p. 41
Nom. F. No. 728
(B)

I am surprised to note the contents of Order No.P.891/1/38 dated 28th March 1939 received from the District Magistrate and Assistant to the Resident to my appeal petition dated 13-2-39, stating that the matter cannot be reconsidered and also further representation regarding this will be ignored. Re. this I beg to state

That the previous owner Mr. K.C.Munisamy Chetty had applied for permission to sub-divide the above land into 8 plots in the year 1924 and a reply had been issued in No.P.927 dated the 14th May 1924 on these lines " That sanction would be accorded if he was prepared to pay for the construction of a 30' Road and for a culvert on Wheeler Road

3 That Mr. K.Chinna Munisamy Chetty subsequently requested the President, Municipal Commission to let him know the cost the forming of the road and construction of the culvert etc, which was intimated to him under No. R.1423 dated the 14th November 1924 but he could not comply with the requirements, probably due to domestic troubles

4 That the land in question was purchased by me for over Rs. 10,000/- in the year 1936 on the strength of the above orders being shown to me. Hence I submitted a modified plan in duplicate on 28th September 1938 for which a reply was received from

from the District Magistrate and Assistant to the Resident stating that sanction is refused on Military grounds.

That the lay out in question was sanctioned by the President after the recommendation of the Health Committee & Standing Committee in the year 1924 after due consideration having been given to the proximity of the Officers Mess etc with the intention of bungalows being erected for the British Officers, That to refuse sanction now on Military grounds, which had once been sanctioned, is unjustifiable.

That if the Military thinks that no construction should be allowed there, the land may be caused to be acquired by them for inclusion into the Mess compound.

That there cannot be regulations to refuse an application unless under sanitation or congestion, which could also be prevented by reducing the number of plots as necessary and not indiscriminately.

Under the above circumstances, I respectfully appeal to you, Respected Sir, to kindly give this application its due consideration and sanction my application, If the Military authorities either fail to recommend the sub-division of the above land or acquire it for purposes of their own. I am afraid I will be compelled to the painful necessity of seeking redress in a Court of Law, for all damages that has been caused to me from the time of the purchase of this land, for which I have paid over Rs. 10,000/-, as already stated above.

Thanking you.

I beg to remain
Sir,
Your most obedient servt

Bangalore
28th March 1939.

R.Dis. F.No. 255-39
Judl.

Issue 7/6

From

The Secretary to the Resident.

To

Mr. L.P. Nuthmall,
R.H.A. Bazaar,
Bangalore.

With reference to his application dated the 28th March 1939, Mr.Nuthmall is informed that the Hon'ble the Resident sees no reason to interfere with the orders passed by the District Magistrate and Assistant to the Resident.

SECRETARY TO THE RESIDENT.

× P.U.C
S.N.I

Asst
6.6.39

S. N. 3

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
13 SEP 1939
Diary No. 9521
File No. 9236/39.

To,

The Secretary

to the Hon'ble the Resident in Mysore,

Bangalore.

Respected Sir,

With reference to your Order No. R.Dis.F.235 of 39 dated the 7th June 1939, in reply to my appealed petition dated the 28th March 1939, in respect of Sub division of plots on Wheeler Road, I respect-fully beg to state as follows

1. There is no NOTIFICATION published in the Civil and Military Station that certain areas are not permitted to erect buildings on the grounds of certain reasons, and even granting if there should be such a Notification, it is the duty of the Commission or the Military to acquire such lands from the public, without incurring any loss to them.

2. As I have bought the said land at a heavy cost, I request you to kindly -

i. to purchase the land from either by the Municipal Commission or by the Military, on whose ground the sanction is refused, at the present Market valuation,

or ii. to accord sanction for sub:division of plots into building sites in such a way as it would not stand objectionable from a Military point of view.

3. As there is no other alternative to put before you, I request you to kindly reconsider my case without a partial eye and to come to come to settlement as per conditions mentioned above.

For which act of kindness I feel ever thankful.

I beg to remain,
Sir,
Your most obedient servant,

Bangalore,
21st Sept 1939.

R.Dis.No.F.236-39 18th Sept 1939
Judl

Issue 15/9

From

The Secretary to the Resident.

To

Mr.L.P.Nuthmall,
R. H. A. Bazaar, Bangalore.

With reference to his petition received in this Residency on the 13th September 1939 Mr.Nuthmall is informed that the Hon ble the Resident is of the opinion that there is no case for a reconsideration of the orders communicated in Memorandum No.R.Dis.F.No. 236-39/Judl dated the 7th June 1939.

(Sd) N. Trevelyan.
Secretary to the Resident.

14.9.39